EXHIBIT 1 to ADMIN MOTION FOR LEAVE TO FILE SUR-REPLY

(Redacted Version)

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12	UNITED STATES DISTRICT COURT		
13	NORTHERN DISTRICT OF CALIFORNIA		
14	SAN JOSE DIVISION		
15	ADTRADER, INC.,	Case No. 5:17-CV-07082-BLF	
16	Plaintiff,	PLAINTIFFS' [PROPOSED] SUR-REPLY	
17	v.	IN SUPPORT OF OPPOSITION TO GOOGLE'S MOTION TO DISMISS	
18	GOOGLE LLC.	CERTAIN CLAIMS IN SECOND AMENDED CLASS ACTION COMPLAINT	
19	Defendant.	Judge: Hon. Beth L. Freeman	
20		Hearing Date: March 7, 2019 Time: 9:00 a.m.	
21		Courtroom: 3	
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		PLTFS.' SUR-REPLY RE MTD SAC	

CASE NO. 5:17-CV-07082-BLF

SUR-REPLY IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS

Plaintiffs submit this Sur-Reply in support of their Opposition to Google's Motion to Dismiss Certain Claims in Second Amended Class Action Complaint (ECF 79; 72 ("SAC")). In the four months since Plaintiffs filed that Opposition, Google has since produced more than 68,000 pages of documents in discovery. These documents reveal that despite Google having repeatedly told the Court that Plaintiffs' class action allegations were "frequently false" (see, e.g., ECF No. 25 at 2:9-10; ECF No. 36 at 2:10) it turns out that

Plaintiffs do not present this sample of evidence here to rehash the arguments raised in the parties' briefing on Google's pending motion—Plaintiffs' Opposition demonstrates that Google's motion should be denied in its entirety. However, if the Court is inclined to disagree, these additional facts show that leave to amend should be granted. Rule 15 "instructs courts to 'freely give leave when justice so requires," and this standard "is applied with 'extreme liberality." See Camacho v. Jefferson Capital Sys., LLC, No. 14-CV-02728-BLF, 2015 WL 1939071, at *1 (N.D. Cal. Apr. 28, 2015) (Freeman, J.) (citing Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001).) The evidence described below readily establishes leave to amend here would not be futile, as a Third Amended Complaint ("TAC") could plead and rely on such facts to establish Google's liability under all of Plaintiffs' existing class action claims. Moreover, this sample is only a fraction of the hundreds of helpful documents that a TAC could draw upon.

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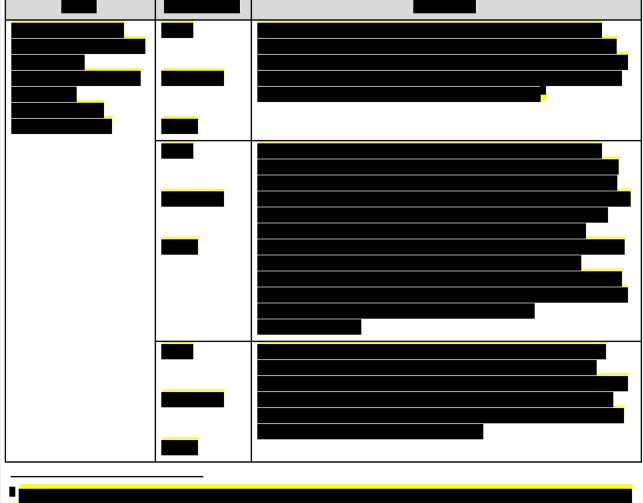
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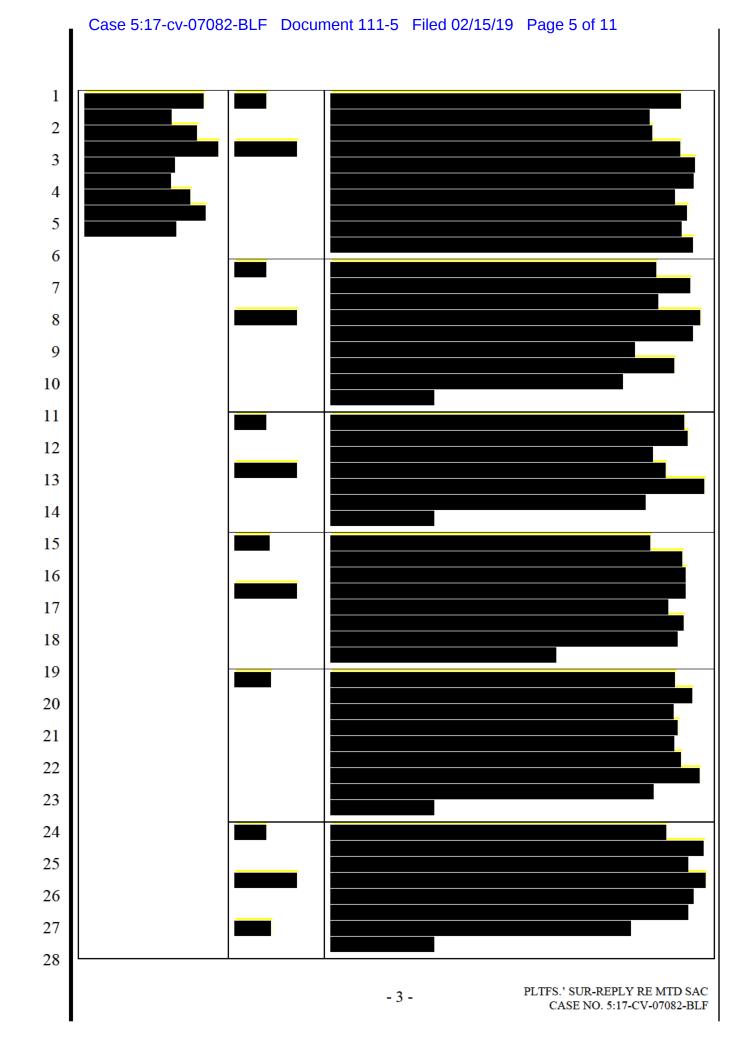
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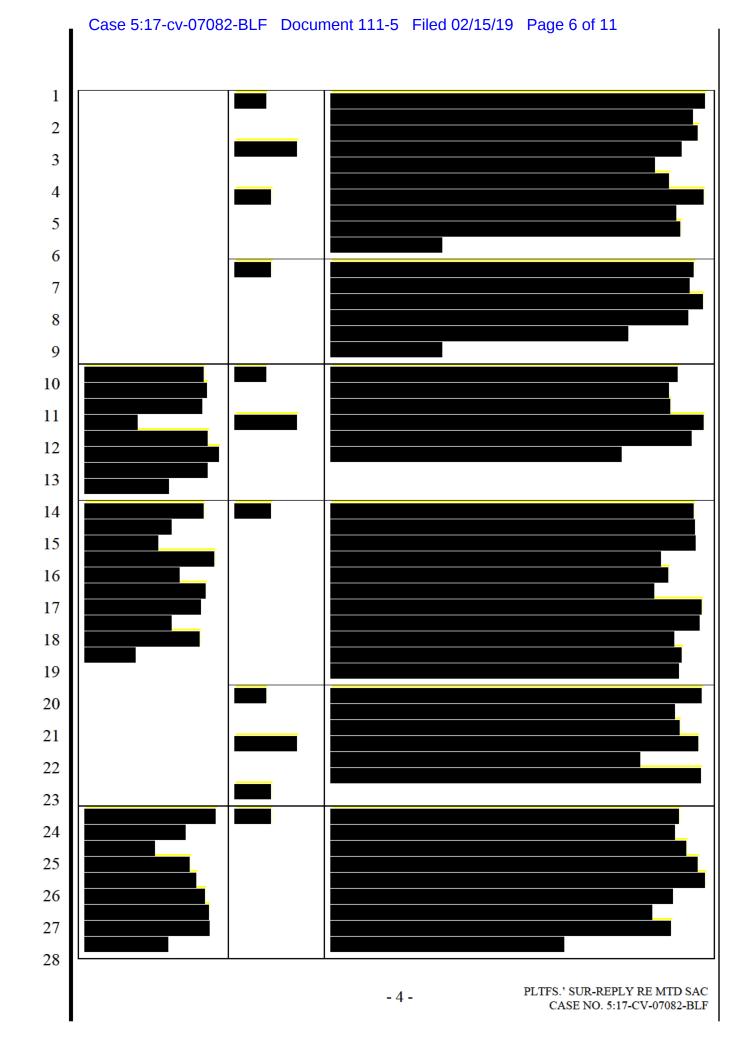
I. NEW FACTS SUPPORT PLAINTIFFS' CLASS ACTION BREACH OF CONTRACT CLAIMS (COUNT V).

The Court may recall that Google argues that Plaintiffs' breach of contract class action claims should be dismissed because Google does not have a contractual obligation to provide refunds/credits for invalid activity based on a straightforward interpretation of the AdX, AdWords, or DBM Agreement. Google also argues that there is no extrinsic evidence showing that any of those contracts are ambiguous with respect to this obligation.

Plaintiffs have discovered the following facts in addition to those already pled establishing that leave to amend with respect to those issues, and more, would not be futile:







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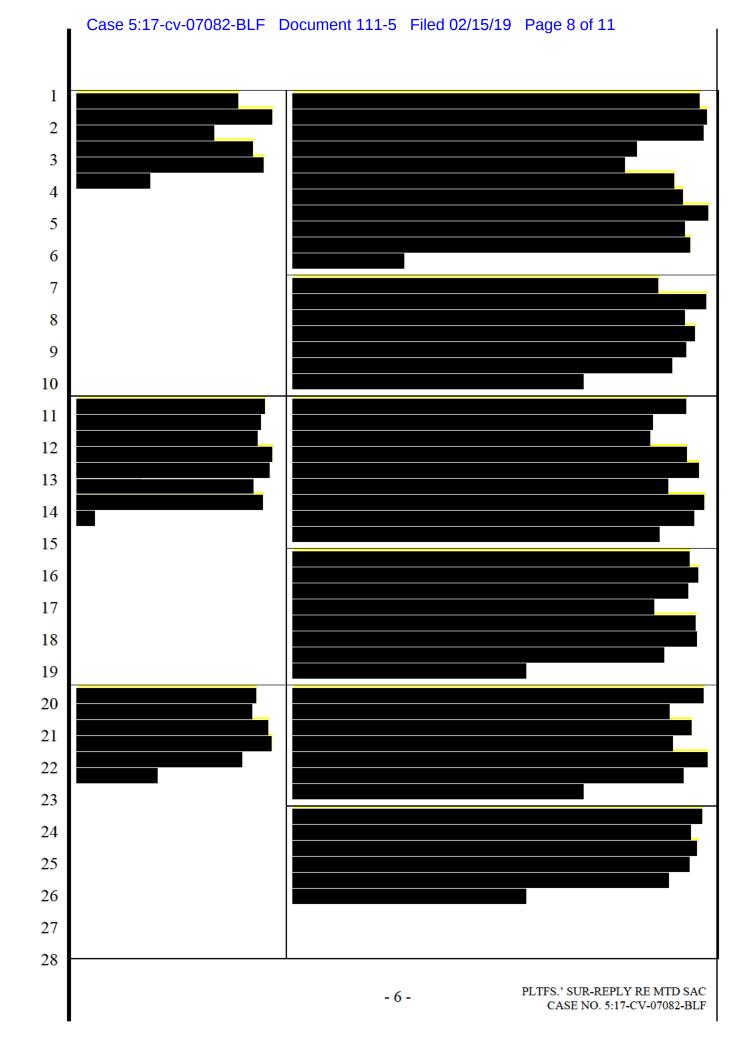
II. NEW FACTS SUPPORT PLAINTIFFS' BREACH OF THE IMPLIED COVENANT CLAIMS (COUNT VI).

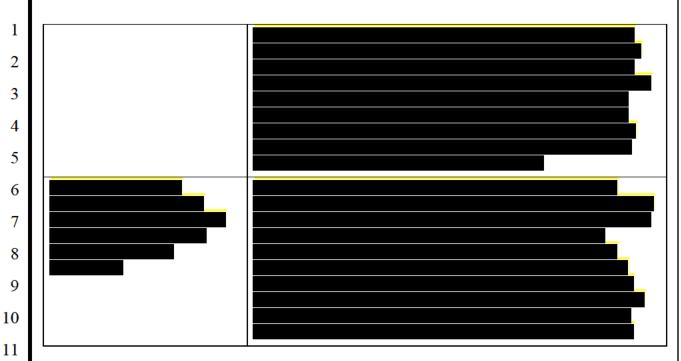
Regarding Plaintiffs' breach of the implied covenant of good faith and fair dealing class action claim, there is abundant, indisputable evidence that Google acted in bad faith to deprive advertisers from their expected benefits under their contracts

new evidence Plaintiffs discovered supporting each of the classes' claims is as follows, and applies to class claims arising under the AdX Agreement and the DBM Agreement:

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IV. NEW FACTS SUPPORT PLAINTIFFS' FALSE ADVERTISING AND UNFAIR COMPETITION LAW CLAIMS (COUNTS VIII AND IX).

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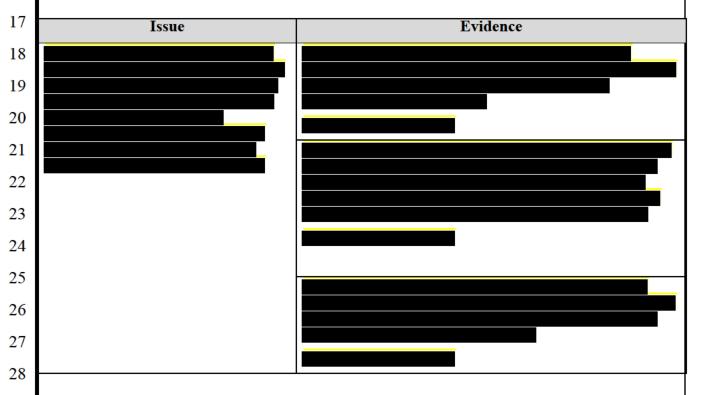
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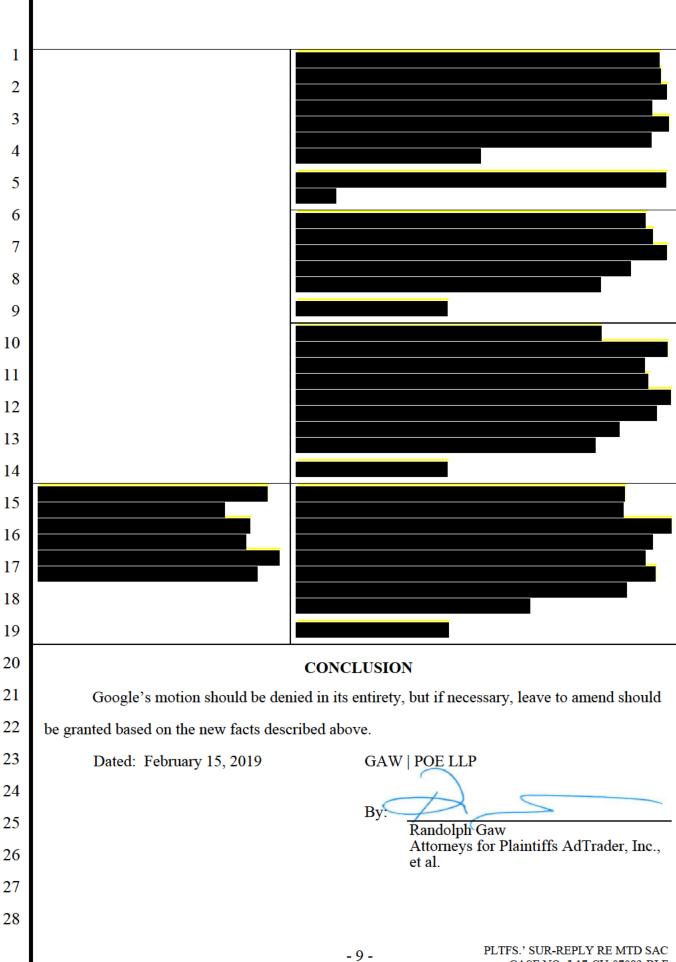
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Google moved to dismiss the False Advertising Law claims (and by extension, the UCL claims) partly on the grounds that Plaintiffs did not allege how Google's statements were untrue or misleading. The following new facts show that leave to amend with regard to these issues is not futile:





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